

STATE OF MICHIGAN
COURT OF APPEALS

LBP,

Petitioner-Appellee,

v

BWW,

Respondent-Appellant.

UNPUBLISHED
November 26, 2019

No. 345833
Charlevoix Circuit Court
LC No. 18-033226-PH

RWP,

Petitioner-Appellee,

v

BWW,

Respondent-Appellant.

No. 345834
Charlevoix Circuit Court
LC No. 18-033326-PH

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's orders dismissing as untimely his motions to terminate the April 17, 2018 *ex parte* personal protection orders (PPOs) entered in favor of petitioners. Respondent argues that the trial court abused its discretion by issuing the PPOs because petitioners failed to demonstrate that respondent's conduct constituted stalking as defined by MCL 750.411h and MCL 750.411i. Further, respondent argues that the trial court abused its discretion by dismissing and denying his motions to terminate because his incarceration constituted good cause for the delayed filings. We affirm.

I. FACTS

On April 10, 2018, petitioners filed a joint petition for an ex parte PPO against respondent for conduct that occurred in 2011 and 2012. Petitioners are the mother-in-law and the father-in-law of respondent. Respondent married petitioners' daughter, and they have one child together. The petition alleged that in July 2011, respondent hit his mother-in-law, LBP, multiple times; that in August 2012, respondent threatened to kill both petitioners; that in October 2012, petitioners obtained a protective order in Arlington County, Virginia; that on July 18, 2014, a federal arrest warrant was issued for respondent for possession and distribution of child pornography on the basis of allegations that included conduct indicating respondent's desire to sexually molest his young daughter; that respondent was sentenced to federal prison for the offense and was scheduled for release on November 27, 2018; and that petitioners believed that respondent was capable of causing harm to petitioners and their grandchild upon his release.

On April 10, 2018, the trial court granted petitioners' requests for the ex parte PPOs. The trial court granted the ex parte PPO for LBP, without a hearing, on the basis that respondent committed unconsented acts of assault and threats. The trial court granted the ex parte PPO for RWP, without a hearing, on the basis that respondent committed unconsented acts of stalking and threats. Respondent was served with the PPOs on April 17, 2018. Respondent was incarcerated in a federal correctional facility at the time the PPOs were entered against him. Respondent filed his motions to terminate the PPOs on September 17, 2018, and alleged that his incarceration constituted good cause for the five-month delay in filing, which exceeded the 14 days allowed to file the motion under MCR 3.707(A)(1)(b), because he was unable to obtain and afford counsel.

On September 18, 2018, the trial court "denied and dismissed" respondent's motions to terminate the PPOs on the ground that respondent had failed to show good cause for the five-month filing delay.

II. ANALYSIS

Respondent first argues that the trial court erred in issuing the PPO against him pursuant to MCL 600.2950a, as there was no reasonable cause to believe he committed any acts of stalking as prohibited by MCL 750.411h and MCL 750.411i. We disagree.

This Court reviews a grant or denial of a PPO, including a trial court's decision to deny a respondent's motion to rescind or terminate a PPO, for an abuse of discretion. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Id.* Further, this Court reviews a trial court's factual findings for clear error. *Id.*

"A person may file an independent action in the family division of the circuit court to seek the entry of a PPO to restrain another person from engaging in conduct that is prohibited under [MCL 750.411h] [stalking] or [MCL 750.411i] [aggravated stalking]" *Pobursky v Gee*, 249 Mich App 44, 46; 640 NW2d 597 (2001) (quotation marks omitted; second and fourth alterations in original), quoting MCL 600.2950a(1). MCL 750.411h(2) prohibits stalking and MCL 750.411i(2) prohibits aggravated stalking. Both statutes define "stalking" as "a willful

course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 750.411h(1)(d); MCL 750.411i(1)(e). See also *Pobursky*, 249 Mich App at 46-47.

MCL 750.411i(2)(c) provides that an individual commits aggravated stalking when the individual’s “course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim’s family, or another individual living in the same household as the victim.” A “credible threat” means “a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.” MCL 750.411i(1)(b).

We conclude that petitioners’ allegations provided a sufficient factual basis for the issuance of the PPOs pursuant to MCL 600.2950a and MCL 750.411i.

MCL 600.2950a(1) provides that a trial court may issue an ex parte PPO upon a factual showing that the respondent engaged in conduct constituting aggravated stalking under MCL 750.411i(2)(c). The trial court granted the ex parte PPOs on the basis of credible threats. In order for the trial court to issue a PPO on the basis of a credible threat, petitioners only needed to allege facts demonstrating that respondent made “1 or more credible threats,” MCL 750.411i(2)(c), and a threat to kill is considered a “credible threat” if made in a manner that would cause a reasonable person to fear for his safety, MCL 750.411i(1)(b).

RWP alleged that respondent threatened to kill him and his wife, LBP, in August 2012. RWP also alleged that a prior protective order was issued on this basis by an out-of-state court in October 2012. Although these events happened several years ago, RWP suggested that respondent’s pending prison release gave him reason to believe that respondent was capable of causing harm to RWP, LBP, and their grandchild. LBP alleged that respondent assaulted her in July 2011 and that respondent had threatened to kill her and RWP. The facts alleged support a finding that RWP and LBP reasonably feared for their safety and that respondent’s threat was therefore credible. Accordingly, respondent’s alleged threat to kill petitioners constituted aggravated stalking under MCL 750.411i(2)(c) and the trial court did not abuse its discretion by granting the PPOs under MCL 600.2950a(1).

Respondent next argues that the trial court abused its discretion by not finding good cause for respondent’s five-month delay in filing the motions to terminate the PPOs. We disagree.

MCR 3.707(A)(1)(b) allows a trial court to entertain a motion to terminate an ex parte PPO if the motion is filed within 14 days after being served with, or receiving actual notice of, the order, or if the motion is filed after the 14-day period and good cause is shown for the late filing. In this case, respondent was personally served with the PPOs on April 17, 2018. Although respondent argues that his incarceration made it difficult for him to obtain and afford counsel, the trial court determined that respondent’s incarceration did not constitute good cause for filing the motions five months after the 14-day period expired. The trial court acted within its discretion under MCR 3.707(A)(1)(b) by denying respondent’s motions to terminate on the

ground that mere incarceration was not a reasonable excuse for the five-month delay in responding to the PPOs.

Affirmed.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Michael J. Riordan